

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

Item No. 1.F.  
Mtg. Date April 17, 2018  
Dept. Development Services

Item Title: **Fifth Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way**

Staff Contact: David De Vries, Development Services Director

**Recommendation:**

Adopt a resolution amending the Option Agreement to provide a fifth six-month time extension and other amendments.

**Item Summary:**

In September 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is Lemon Grove Housing Authority owned land. The Purchase Option Agreement required SDCLT to complete certain milestones by specified dates. These milestones ensure that SDCLT has progressed towards the purchase of 8084 Lemon Grove Way. The fourth milestone—securing building and site improvement permits and securing, as to form, the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be completed by May 19, 2016 and the Fourth Option Amendment extended this date to April 19, 2018. The ground lease has been approved as to form. The applicant is working with City staff and other agencies to achieve this milestone as it relates to securing permits; however, they will be unable to meet the specified deadline. City staff recommends that the City Council adopt a resolution amending the Option Agreement to provide a fifth time extension.

**Fiscal Impact:**

None.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review         | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [       ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 500 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report
- B. Resolution Amending the Option Agreement



# Attachment A

## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.F.

Mtg. Date April 17, 2018

Item Title: **Fifth Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way**

Staff Contact: **David De Vries, Development Services Director**

### Discussion:

On September 22, 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is owned by the Lemon Grove Housing Authority (City Council Resolution No. 2014-3284 dated September 16, 2014). A nine unit housing development is currently entitled on the subject property based on approvals in 2007 and amendments approved on March 1, 2016. The Purchase Option Agreement allows SDCLT to purchase the property for one dollar per unit in exchange for constructing the units and restricting them to moderate income households included in their 99-year ground lease mechanism. SDCLT is required to achieve certain milestones by specified dates. These milestones ensure that SDCLT has done their due diligence to determine whether the project is feasible.

The first milestone—submission of a business plan—was to be achieved by December 2014. The business plan was submitted on December 1, 2014 and the City Council reviewed the business plan and provided feedback to SDCLT on January 6, 2015.

The second milestone—securing entitlements and construction financing—was to be achieved by September 2, 2015 and October 19, 2015, respectively. Minimal revisions to the approved Tentative Map (TM0052) and Planned Development Permit (PDP06-09) were proposed and amendments to the floor and elevation plans were approved by the City Council on March 1, 2016. Entitlements for both the tentative map and planned development permit have been secured since there has been substantial progress towards the issuance of a final map, grading plan, improvement plan and building permits for the completion of the project. On October 17, 2017, as a part of the fourth amendment to the option agreement, the option agreement was amended to allow SDCLT to secure financing a minimum of 10 days prior to exercising the option.

The third milestone—submit building and site improvement applications—was to be achieved by April 4, 2016. This milestone requires submittal of development plans and technical studies required for a grading permit, building permit, landscape permit, and a final map. Appropriate plans and reports include building and site construction plans, grading plans, a landscape documentation package, an acoustical analysis, a Storm Water Quality Management Plan and a hydrology report, and potentially other necessary reports, studies, and plans in accordance with City Council Resolutions 2694 and 2695, which approved TM0052 and PDP06-09 respectively. A “Hold Harmless” agreement was required for each submittal. In February of 2016, SDCLT submitted the necessary permit applications achieving the third milestone.

The fourth milestone—securing building and site improvement permits and securing approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be achieved by May 19, 2016; but is now extended to April 19, 2018. This

## Attachment B

requires that all permits applied for in the third milestone are secured (permits issued and improvements secured either through a bond or cash deposit with appropriate fees paid). At this time, SDCLT recently submitted their fifth resubmittal for engineering permits and corrections from the City have been provided to the applicant. There are also corrections from stormwater and engineering on the building permit submittal that are required to be resolved prior to issuance of building permits. City staff estimates all of the needed engineering and building permits in the fourth milestone should be able to be issued and secured within two to four months assuming corrections are addressed. City staff recommends that a fifth six-month extension to the Option Agreement be provided in order to allow SDCLT sufficient time to secure the permits and arrange for funding the permit fees (**Attachment B**). As a part of the fourth option agreement amendment, SDCLT and the City approved as to form a draft ground lease and an affordable housing regulatory agreement.

Should the City Council decide to take no action providing for no amendment to the Option Agreement, then the Option Agreement will terminate on April 19, 2018 since the fourth milestone would not have been achieved and, thereafter, the developer would need to renegotiate a new option agreement with the City should they continue to pursue the project. The City Council may pursue other opportunities for the property if this option agreement terminates.

### **Conclusion:**

City staff recommends that the City Council adopt a resolution amending the Option Agreement to provide a fifth time extension and related amendments (**Attachment B**).

## RESOLUTION NO. 2018-\_\_\_\_\_

### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING AN AMENDMENT TO AN OPTION AGREEMENT WITH THE SAN DIEGO COMMUNITY LAND TRUST FOR THE PARCEL IDENTIFIED AS 8084 LEMON GROVE WAY (APN 475-450-19-00)

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**WHEREAS**, on June 20, 2006 and June 19, 2007, the former Lemon Grove Community Development Agency and a developer entered into loan agreements for the development of nine townhome units at 8084 Lemon Grove Way; and

**WHEREAS**, said developer defaulted on the loan agreements, resulting in the parcel identified as 8084 Lemon Grove Way becoming property of the City of Lemon Grove; and

**WHEREAS**, in 2014, the San Diego Community Land Trust provided a formal offer to purchase 8084 Lemon Grove Way from the City of Lemon Grove; and

**WHEREAS**, the San Diego Community Land Trust's offer included a commitment to develop and construct a minimum of nine affordable housing units to be ground leased for a 99-year period to households earning from 80 percent to 120 percent of the San Diego Area Median Income at the time of sale or resale; and

**WHEREAS**, the provision of these affordable units helps exceed the City's moderate housing targets established by the Regional Housing Needs Assessment (January 1, 2013 – December 31, 2020); and

**WHEREAS**, on June 17, 2014, the City Council directed City staff to negotiate purchase agreements with the San Diego Community Land Trust, based on its offer; and

**WHEREAS**, on September 16, 2014, the City Council approved an Option Agreement and a Real Estate Purchase and Sale Agreement between the City of Lemon Grove and the San Diego Community Land Trust; and

**WHEREAS**, on May 17, 2016, the City Council approved an amendment to the Option Agreement with the San Diego Community Land Trust extending the expiration date of milestone 7.4 to October 19, 2016 and the option term to March 22, 2017 (both six month extensions) and including an Optionee requirement to execute an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property; and

**WHEREAS**, the City has negotiated a second amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2017 and the option term to September 22, 2017 (both six month extensions); and

**WHEREAS**, the City has negotiated a third amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2017 and the option term to March 22, 2018 (both six month extensions) and requiring milestone 7.2 – secure construction financing – to be completed by July 19, 2017; and

**WHEREAS**, the City has negotiated a fourth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2018 and the option term to September 22, 2018 (both six month extensions) and requiring milestone 7.2 – secure construction financing – to be completed a minimum of 10 days prior to the execution of the option; and

**WHEREAS**, the City has negotiated a fifth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2018 and the option term to March 22, 2019 (both six month extensions); and

**WHEREAS**, the City Council has reviewed said amendment; and

**WHEREAS**, the City Council finds it in the best interest of the City of Lemon Grove to approve said amendment; and

## Attachment B

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California hereby:

1. Approves a Fifth Amendment to the Option Agreement (Exhibit 1) between the City of Lemon Grove and the San Diego Community Land Trust; and
2. Authorizes the City Manager to execute said Amendment and related documents reasonably necessary for fulfilling the terms of the Option Agreement, subject to minor modifications. |

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## EXHIBIT 1 (PAGES 7 THROUGH 8)

### FIFTH AMENDMENT TO OPTION AGREEMENT

This Fifth Amendment to Option Agreement (“**Fifth Amendment**”) is entered into as of April 18, 2018, by and between and between THE CITY OF LEMON GROVE a public body (“**Optionor**”) and THE SAN DIEGO COMMUNITY LAND TRUST a California 501(c)(3) non-profit organization (“**Optionee**”),

#### RECITALS:

A. Optionor and Optionee entered into that certain Option Agreement dated September 22, 2014 relating to the Property commonly known as 8084 Lemon Grove Way, Lemon Grove, CA (APN475-450-19-00), as amended by the First Amendment dated March 18, 2016, as amended by the Second Amendment dated October 5, 2016, as amended by the Third Amendment dated April 17, 2017, and as amended by the Fourth Amendment dated October 18, 2017 (together the “**Option Agreement**”).

B. Optionor and Optionee desire to further amend the Option Agreement set forth herein. All initially capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Option Agreement.

#### AGREEMENT:

NOW THEREFORE, and in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

1. Extension of Option Term. Paragraph 4 of the Option Agreement is deleted in its entirety and replaced as follows:

“4. Option Term. The Option may be exercised upon the Effective Date and no later than March 22, 2019 (the “**Option Term**”), unless terminated earlier under the terms of Section 6. If the Option is not exercised in accordance with the provisions and conditions hereof during the Option Term, then the Option shall expire and the parties shall have no further obligations under this Agreement with the exception of any surviving indemnification obligations as provided in this Agreement.”

2. Extension of deadline for Permits and Optionor’s Approval. Subparagraph 7.4 of the Option Agreement is deleted in its entirety and replaced as follows:

“7.4 No later than October 19, 2018, Optionee shall have (i) completed all requirements necessary for Building and Site Improvement Permits (including building, street improvement, and grading plans shall be issued and the final map shall be recorded), with the exception of payment of fees for the foregoing permits and plans (“Permit Fees”). All outstanding Permit Fees shall be delivered to Escrow prior to the transfer of the Property to Optionor and shall be a Developer (Optionee) deliverable under section 2.6 of the revised Real Estate Purchase and Sale Agreement (“PSA”), as attached to the Fourth Amendment as Fourth Amendment Exhibit A.”

3. Counterparts. This Fifth Amendment may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event, this Fifth Amendment is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one Fifth Amendment.

4. Effect of Fifth Amendment. Except as amended hereby, the Option Agreement remains in full force and effect.

## Attachment B

IN WITNESS WHEREOF, Optionor and Optionee have executed this Fifth Amendment as of the date set forth above.

**OPTIONOR:**

THE CITY OF LEMON GROVE,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to legal form:

By \_\_\_\_\_  
James P. Lough, City Attorney

**OPTIONEE:**

THE SAN DIEGO COMMUNITY LAND TRUST,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_